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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CRIPILIANO PENA, *et al.*,

Plaintiffs,

-against-

SAN MIGUEL TRANSPORTATION, INC., *et al.*,

Defendants.

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14cv1463

ORDER

WILLIAM H. PAULEY III, District Judge:

Defendants move to dismiss Plaintiff Pena and Mercedes' overtime claims under New York Labor Law ("NYLL"). Defendants argue Plaintiffs cannot recover overtime because they are subject to the Fair Labor Standard Act's ("FLSA") "motor carrier" exemption. However, New York law, unlike the FLSA, awards reduced overtime compensation for those exempt from the FLSA's overtime requirements altogether. Specifically, NYLL regulations require that employers pay FLSA exempt employees "overtime at a wage rate of one and one-half times the basic minimum hourly rate." See 12, N.Y.C.R.R. § 142-2.2. During the relevant period in this case, New York's minimum wage was \$7.25 per hour, which means all FLSA exempt employees would be entitled to at least one and a half-times \$7.25, or approximately \$10.88 per hour, for any hours worked over forty a week. Cf., e.g., Almeida v. Aguinaga, 500 F. Supp. 2d 366, 368 (S.D.N.Y. 2007).

Here, the Plaintiffs allege they were paid less than \$6 per hour for all hours worked, and that they regularly worked over forty hours a week. See Second Amended Compl. ¶¶ 22-25, 30-33. Therefore, this Court finds that Plaintiffs have adequately stated a claim to recover for violations of New York Labor Law's overtime requirements.

The Defendants' motion to dismiss is denied. The Clerk of Court is directed to terminate the motion pending at ECF No. 28.

Dated: October 17, 2014  
New York, New York

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.

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